IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 389 of 2003
with
CIVIL APPLICATION No 7641 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE CIVIL SUPPLIES CORPORATION LIMITED

Versus

AMAR TRADING COMPANY

Appearance:
1. Appeal from Order No. 389 of 2003
MR KM PATEL for Appellant
MR MG NAGARKAR for Respondent

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 04/05/2004

C.A.V. JUDGEMENT

1. This Appeal from Order is filed by the present appellant - original defendant against the order dated 01.10.03 passed by the learned Civil Judge (S.D.),

Gandhinagar below application Ex.21 in Regular Civil Suit No.129 of 2003, whereby the learned trial Judge has allowed the said application Ex.21 and has directed that on depositing of Rs.2.00 lakhs as security by the respondent - original plaintiff, the appellant Corporation should refund the amount of security deposit of Rs.15,50,000 fothwith.

2. The brief facts giving rise to this present Appeal from order are as under :-

2.1 The appellant is being a Government Company engaged in the work of public distribution system, invited tenders for purchase of 1025 Metric Tonnes ("M.T." for short) of Bengal gram (whole) to fulfill the requirement of Bengal gram under the Integrated Child Development Scheme. The tenders were invited pursuant to the tender notice dated 18.03.03 and the tender document contained terms and conditions of bidding. As per the tender document, the gram to be supplied was to be in conformity with the provisions of the Prevention of Food Adulteration Act, 1954 ("P.F.A. Act" for short) and the rules framed thereunder called Prevention of Food Adulteration Rules, 1955 ("P.F.A. Rules" for short). Ex.2 of Part-II of tender document prescribed quality specifications of Bengal gram (whole) to be supplied as per the tender document. Clause (f) under the caption "General Characteristics" states that the gram to be supplied by the tenderer were to conform to P.F.A. Rules.

2.2 It is the case of the appellant that after negotiations, the tender of the respondent - plaintiff for sale and supply of 775 M.T. of gram came to be accepted. The said quantity was to be supplied in two parts. The first part consisting of 387.5 M.T. was to be supplied between 06.05.03 to 19.05.03 whereas remaining part of 387.5 M.T. was to be supplied between 20.05.03 to 12.06.03. As the gram was urgently needed for the requirements of Integrated Child Development Scheme, tender document provided for penalty for late delivery. However, the contract contained condition for late delivery only to the extent of seven days from the stipulated date. The tender of the respondent - original plaintiff, having thus been accepted, it was given order dated 05.05.03 for supply of 775 M.T. of gram and on 08.05.03 contract was signed between the parties.

2.3 It is the say of the appellant that as against the supply of 387.5 M.T. gram between 06.05.03 to 19.05.03, the respondent plaintiff in all offered 368.5

M.T. of gram. Out of that, 87.45 M.T. of gram being in conformity with the provisions of P.F.A. Act and the Rules, was accepted. The quantity accepted by the appellant Corporation was on the basis of it being found in order on physical verification and as per the in-house laboratory report in which Kesari was noticed to be absent. The say of the appellant was that the said quantity was accepted not on the basis of any analysis report of Food and Drug Laboratory, Vadodara, but on the basis of satisfaction by the appellant Corporation as per the in-house QC report and on physical verification as to the absence of Kesari grains in Bengal gram supplied and accepted by the Corporation. 43.5 M.T. of gram was rejected in view of the fact that it did not conform to the quality specification. It is also the say of the appellant that part of quantity was rejected because it contained Kesari gram and part of it was rejected because it contained foreign matters. The appellant has kept the quantity of 237.55 M.T. in abeyance since it was apparent on physical verification that the gram contained Kesari gram as well. It was further contended that in order to confirm the identity of Kesari gram, certain grams were picked up from some of the stock and sent for analysis to Food and Drug Laboratory, Vadodara, who has reported those grains to be Kesari grams. The respondent - original plaintiff, accordingly informed by the letter dated 22.05.03 that the gram supplied by it being not in conformity with the P.F.A. Rules cannot be accepted.

2.4 Thereafter, by the subsequent communication dated 27.05.03, the respondent - original plaintiff was specifically informed that in view of presence of Kesari in Bengal gram supplied by it, the same was not in conformity with P.F.A. Rules and, therefore, the quantity supplied by the respondent original plaintiff and found containing Kesari was rejected. By the said letter dated 27.05.03, the appellant Corporation asked the respondent - original plaintiff to depute its authorized representative on 28.5.03 for joint sampling. However, the respondent - original plaintiff evaded the offer of the Corporation by the Fax Message dated 28.05.03 informing the Corporation that its responsible officer being out of town could not attend the joint sampling.

2.5 Keeping the above facts in mind, the appellant Corporation rejected 237.5 M.T. of gram supplied by the respondent original plaintiff in which presence of Kesari was found on physical verification and later on confirmed by the Food and Drugs Laboratory, Vadodara.

3. Being aggrieved by the said decision of the appellant Corporation, the respondent - original plaintiff filed initially writ petition before this Court being Special Civil Application No.7119 of 2003 praying, inter alia, that the appellant Corporation be directed to accept the disputed quantity of gram supplied by it containing Kesari and for related reliefs.

4. After hearing the parties, the said writ petition was withdrawn with a view to make representation to the Corporation. Instead of making representation, the respondent - original plaintiff filed Regular Civil Suit No.129 of 2003 in the Court of learned Civil Judge (S.D.), Vadodara on or about 23.06.03 praying for declaration that the procedure adopted by the appellant Corporation in rejecting the quantity of 237.5 M.T. gram was arbitrary, illegal and contrary to the provisions of P.F.A. Rules, for further declaration that the proposed action of collecting sample for the third time from the disputed quantity of gram as per letter dated 19.06.03 of the Corporation was illegal and that mere presence of small quantity of Kesari does not amount to adulteration as per Rule 44-A of the P.F.A. Rules. The respondent - original plaintiff has also made a prayer in the said suit for restraining the Corporation from collecting samples of gram as per its communication dated 19.06.03 and for direction requiring the Corporation to release the security deposit with 18% interest without quantifying the figure of security deposit or paying required Court fees. The respondent - original plaintiff, thereafter, moved an application Ex.21 praying, inter alia that the plaintiff was ready to replace the disputed quantity of 237.5 M.T. of gram and that on replacement of the disputed quantity, the contract should be treated to have been concluded and the security deposit and all the dues be paid to the plaintiff and that in order to safeguard the interest of the appellant Corporation, the respondent - original plaintiff was ready to give bank guarantee of Rs.2.00 lakhs. The respondent original plaintiff also moved an application Ex.22 for amendment of the plaint as well as application for interim injunction. In the application for interim injunction, the respondent - original plaintiff prayed for release of disputed quantity of gram of 237.5 M.T. and for further direction to release the security deposit of Rs.6.00 lakhs allegedly withheld by the Corporation and for further direction that the entire security deposit of Rs.15,50,000/- be refunded. The suit was, thereafter, valued at Rs.21.50,000/-. An application Ex.21 was disposed of by the learned trial Judge vide his order dated 01.10.03 and the said order is

challenged in the present Appeal from Order.

5. Mr.K.M.Patel, learned advocate for the appellant has submitted that the learned trial Judge has failed to appreciate that the forfeiture of security deposit for breach of contract was a condition of contract between the parties. As per para-9 of the contract between the parties, the entire security deposit is liable to be forfeited for breach of contract. The Bengal gram supplied by the respondent - original plaintiff did not confirm to the provisions of Rule 44-A of the P.F.A. Rules. Consequently, there is ex facie breach of contract on the part of the respondent - original plaintiff. The security deposit was, therefore, forfeited by the Corporation. The learned trial Judge could not have, therefore, directed to release of security deposit of Rs.15,50,000/- on the plaintiff depositing Rs.2.00 lakhs cash to secure the interest of the appellant Corporation.

6. Mr.Patel has relied on the decision in the case of Vidya Vinod alias Chunnulal and etc. Vs. State of U.P., reported in 1998 Cri.L.J. 3318, wherein it is held that "use of Kesari Dal as food was totally prohibited by the Act. There is no infirmity in this finding of the appellate Court. Even if the rodent excreta was within the permissible limit yet since Kesari Dal was found mixed, use of which as food was totally prohibited under Rule 44-A, the sample was rightly treated by the Court below as adulterated."

7. Mr.Patel has further submitted that respondent - original plaintiff has no prima facie case in the matter and the record of the case ex-facie shows that the respondent - original plaintiff committed breach of contract. Breach of contract entails liability of forfeiture of security deposit. Since there was no prima facie case and there was no case for granting any interim direction de hors the provisions of Order 39, Rule 1-2 of Civil Procedure Code, the balance of convenience and comparative hardships were not in favour of the respondent. Applying the celebrated principles of prima facie case, balance of convenience and comparative hardships, it was not a fit case in which the impugned order could have been passed by the learned trial Judge.

8. Mr.Patel has further submitted that by granting interim relief in the impugned order below Ex.21, the learned trial Judge has virtually granted final relief claimed by the respondent original plaintiff. He has submitted that there is a settled principle of law that

the relief admissible as final relief cannot be granted by way of interim relief. In this connection, he has relied on the decision of the Hon'ble Supreme Court, in the case of Bank of Maharashtra Vs. Race Shipping and Transport Co. Pvt. Ltd., and another, reported in AIR 1995 S.C. 1368, wherein the practice of granting interim orders which practically gives the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other consideration is deprecated. Even in the case of Council for Indian School Certificate Examination Vs. Isha Mittal and another reported in (2000) 7 S.C.C. 521, the Hon'ble Supreme Court has held that it is the obligation of the High Court to decide the matters before it in accordance with law. If the law was in favour of the appellant before it, it was obliged to make an order in favour of the appellant. Considerations of equity can not prevail and do not permit a High Court to pass an order contrary to the law.

9. Mr.Patel has submitted that by granting interim relief the learned trial Judge has not considered general guidelines issued by the Apex Courts time and again granting for the purpose of such interim relief. He has submitted that the plaintiff must have a strong case for trial that is it shall be a higher standard of a prima facie case which requires the Court to grant prohibitory injunction. It is necessary to prevent a serious and irreparable injury which normally cannot be compensated in terms of money and lastly the balance of convenience in seeking such reliefs. He has, therefore, submitted that the learned trial Judge should not have granted mandatory relief by directing the appellant Corporation to release security deposit of Rs.15,50,000/- in favour of the respondent - plaintiff.

10. Mr.J.R.Nanavati, learned senior advocate with Mr.M.G.Nagarkar, learned advocate for the respondent has submitted that the learned trial Judge has decided an application Ex.21 and the order passed by him with regard to release of security deposit of Rs.15,50,000/- in favour of the respondent original plaintiff is not required to be interfered with by this Court, while exercising its appellate jurisdiction under Order-43, Rule-1 of the Civil Procedure Code. He has submitted that as per the condition No.12, the appellant Corporation was required to collect the sample in a representative method. He has further submitted that the sample has to be collected as per the provisions of P.F.A. standard. He has further submitted that the

practice of the appellant Corporation was to issue analysis report in respect of the various contracts in which the goods covered under the P.F.A. Act have been purchased by the appellant Corporation. Such analysis report categorically provides that the samples have been analyzed as per the standard of P.F.A. Act. Thus, the appellant Corporation is required to collect and analyze the samples as per the provisions of P.F.A. Act. However, the appellant Corporation has deviated from the said proceeding, which were agreed between the parties by their agreement dated 08.05.03 and the tender conditions. As the appellant found kesari dal from the goods, which were lying in their godown and supplied by the respondent - original plaintiff, the appellant Corporation, with a deliberate and ulterior intention to single out the respondent original plaintiff, has adopted such method of sampling, after deviating from a method, which has been adopted since initiation of the contract.

11. Mr.Nanavati has further submitted that the respondent has not supplied a record to the appellant Corporation about the quantity of the Bengal Gram (whole) which is said to have been adulterated or admixtured with kesari as per Rule 44-A of the P.F.A. Rules. He has further submitted that Section 2(ia) of the P.F.A. Act, contains the definition of word "adulterated" Sub clauses (a) to (m) along with the its proviso and explanation are relevant for this purpose and they are squarely applicable to the case of the respondent original plaintiff. Mr.Nanavati has further submitted that when the goods were offered to their godown for delivery, the consignment was found as per the specifications but arbitrarily rejected by the officers of the appellant Corporation on the ground of doubtful presence of kesari in the entire quantity. He has further submitted that till 16.05.03, the appellant Corporation used to unload the cargo on the condition that samples will be sent to Food and Drug Laboratory, Vadodara for approval under P.F.A. Rules and if found fit under P.F.A. Rules, then cargo will be accepted otherwise, it will be returned to the supplier. After getting the report from Food and Drug Laboratory, Vadodara, the appellant Corporation issued the receipt of acceptance on the very same day. However, from 17.05.03 onwards, all of a sudden, they started rejecting the goods under the guise of presence of doubtful kesari on their visual observation.

12. Mr.Nanavati has further submitted that though the Food & Drug Laboratory has already approved the sample of the same quantity, the consignment was not accepted. He has further submitted that the Food and Drug Laboratory,

Gandhinagar analysed the sample and gave its report declaring that the sample confirmed to the standards and approved the quantity. He has further submitted that on an anonymous complaint to the Municipal Commissioner, A.M.C., once again the samples were collected independently under the P.F.A. Act by the Municipal Health Authorities (Food Inspectors) and again, it was found confirming to the standards prescribed by the Law and, therefore, it was submitted that the rejection of the disputed quantity was wrong. He has further submitted that three authorities independently examined and analysed the disputed quantity under the law and it was found that there was no adulteration or admixtures as said by the appellant Corporation and were declared as confirming with the standards prescribed by law. He has further submitted that the Food & Drug Laboratory, Vadodara and the local health authority was the only competent authority to reject the goods under the P.F.A. Rules. The Corporation has no business to analyze the samples under the P.F.A. Rules because, the Corporation was not the authority to analyze the samples under the P.F.A. Rules and also has no authority to prescribed novel procedure for the analysis of samples as per the law. He has further submitted that the action taken by the appellant Corporation is absolutely arbitrary, illegal and dehors the law and, therefore, the order passed by the trial Court below Ex.21 is just and proper and does not warrant any interference by this Court.

13. Mr.Nanavati has further submitted that to find out the adulteration in Gram, the approved test is BOAA test under the Rules and as per the said test, the Food and Drug Laboratory, Vadodara has found the entire goods as not adulterated and reflected negative in test and to that effect, the certificates issued by the competent authority to the appellant Corporation and as per the procedure adopted right from the beginning, the Corporation has to accept the goods in toto and has to issue godown receipts to the respondent supplier. He has further submitted that in the present case, the Corporation has adopted a very novel procedure to send the certain ground to the Food & Drug Laboratory, Vadodara after picking them out from the huge quantity of Bengal Gram (whole) and if there was any doubt or dispute in respect of the adulteration or admixture of kesari or kesari dal, in that case, the representative sample of Bengal Grams were required to be sent to the Food & Drug Laboratory, Vadodara and not the only grains of kesari dal. He has further submitted that the I.S.I. Rules and the Agmark Rules also prescribe certain procedure to be followed for getting the adulteration checked in any

product and which has to be followed universally by all the merchants in their trade including the trade with the State Government. By way of sending only kesari dal to the Food & Drug Laboratory, Vadodara, the officers of the Corporation have tried to achieve their ulterior motive to reject the goods and ultimately, to harass the plaintiff for the reasons best known to them. He has further submitted that in last two years, the Corporation has purchased approximately 10000 metric tonnes of Bengal Gram (whole) of the same variety wherein also, presence of kesari at very low percentage has been found, under various tenders after getting the approval from the Food & Drug Laboratory, Vadodara, and yet goods were neither rejected nor security deposits were withheld or forfeited.

14. Mr.Nanavati has submitted that Corporation adopted such procedure so as to see that the contract could not have been completed within the time and the plaintiff may be compelled to pay penalty to the Corporation under the agreement of the contract. He has further submitted that the Union of India as well as the State Government purchased the agricultural produce like Bengal Gram (whole) through their Nodal Agencies like NAFED, FCI, Gujarat Cooperative Marketing Federation Limited and other similar institutes, at where it was found that there was stray incident of presence of kesari grains in Bengal Gram (whole). However, it does not mean that it was deliberate admixture or adulteration by the Nodal Agencies. He has further submitted that there was no intention on the part of the plaintiff to admixture or to adulterate the food grains in question, but it was the arbitrary action to reject the quantity of goods under one pretext or the other. Mr.Nanavati has further submitted that in the analysis report of Gujarat Civil Supplies Corporation Limited dated 17.05.2003, it has been mentioned by the Inspectors of Quality Control Department that on the instructions of Manager (Quality Control) by letter dated 17.05.2003, the quantity has been rejected on visual inspection only and not on the report of Food & Drug Laboratory, Vadodara. He has further submitted that the Manager (Quality Control) got the instructions from the Managing Director to interfere in the business of the respondent - plaintiff pursuant to the present tender and also got instructions to deviate from the procedure which was adopted by the Department since the commencement of this tender work. He has further submitted that there was no occasion to give directions in the midst of working and conclusion of this contract to deviate from the prescribed procedure and, therefore, the direction in this regard as contemplated

in analysis report dated 17.05.03 are totally uncalled for. He has further submitted that the learned trial Judge has considered the entire matter in its right perspective and found that the appellant Corporation has wrongly rejected the quantity of 237.50 M.T. of Bengal Gram (whole) on the ground of admixture of kesari in the said disputed goods and wrongly withheld the amount of the security of the said contract. Mr.Nanavati has further submitted that the sample sent by the appellant Corporation as contemplated in its letter dated 19.06.03 was dehors the provisions of law and, therefore, any result derived therefrom was totally irrelevant, not admissible and/or acceptable and it was tried to be achieved by the Corporation with a view to mislead and also overreach the ultimate decision of this Court.

15. Mr.Nanavati has further submitted that the appellant Corporation, vide its letter dated 17.09.2003, informed the respondent - plaintiff that the appellant Corporation was purchasing the goods of the disputed quantity at the risk and cost of the respondent plaintiff. Subsequently, tender was floated and rates received were much lower than the contracted rate with the respondent - plaintiff. He has, therefore, submitted that there was no question of any loss to the appellant Corporation and consequently, no security deposit could have been withheld by the appellant Corporation.

16. Mr.Nanavati has further submitted that the purchase order dated 05.05.2003 only states that the goods to be supplied must be in conformity with the quality standard as mentioned in the tender documents. However, for the first time, in the purchase order dated 21.06.2003, it was clarified that the fact regarding goods being totally free from kesari is included in the quality standard and hence, goods to be supplied must be totally free from kesari. Mr.Nanavati has, therefore, submitted that this subsequent change in the purchase order made it clear that the goods were wrongly rejected by the appellant - Corporation and there is no justification in withholding the security deposit on this ground.

17. Considering the above submissions, Mr.Nanavati has only urged that the trial Court has passed just and proper order and directed the appellant Corporation to release the amount of security deposit in favour of the respondent - plaintiff and no interference, therefore, is warranted in the said order.

18. Having heard the learned advocates appearing for

the respective parties and after having gone through the order passed by the learned Judge of the trial Court and after having perused the documents produced before the Court, I am of the view that the conclusion drawn and finding arrived at by the learned Judge in the form of giving mandatory direction to the appellant Corporation to return the security deposit of Rs.15,50,000/- to the respondent - original plaintiff on condition of depositing Rs.2,00,000/- with the trial Court, does not appear to be just and proper at this interim stage, especially when the suit is pending before the trial Court. The legal position is well settled with regard to granting of interim relief. The mandatory order cannot be passed easily or as a matter of course. The mandatory direction can be issued only in rear cases and in the opinion of the Court issuing such direction, all the three celebrated principles of granting interim injunction are found to be in existence. Mere prima facie case is not sufficient for the purpose of granting mandatory relief at the interlocutory stage in the pending suit, over-and-above this, a balance of convenience must also be in favour of the party claiming such interim relief and if the interim relief is denied at such stage, an irreparable loss or injury would be caused to the party claiming such interim relief. In the present case, even if it is assumed that the respondent - original plaintiff had a very strong prima facie case in its favour and the plaintiff is likely to succeed ultimately in the suit, as far as the balance of convenience and irreparable loss or injury are concerned, the Court does not find much substance as it appears from the record that the presence of kesari was found, though in small quantity and as per the terms of the contract, if the goods are in not conformity with the criteria laid down under the provisions of P.F.A. Act or the Rules framed thereunder, the goods are bound to be rejected and in that case, the authority is empowered to forfeit the security deposit. Unless and until, the rival contentions of the parties are examined threat-bare and unless and until, necessary evidence are led by the parties in support of their respective claims, it is difficult to decide as to the balance of convenience is in whose favour. Even otherwise, what is claimed by the respondent original plaintiff in the application Ex.21 is the return of security deposit and what is granted by way of interim relief by the trial Court, is a mandatory direction to the appellant Corporation to return the security deposit of Rs.15,50,000/-. The interim relief granted in terms of monetary value only and even if it was not granted at this stage, it could not have been stated that an irreparable loss or injury was caused to

the respondent original plaintiff, which could not be compensated in terms of money. The Court is, therefore, of the view that no strong case is made out with regard to the balance of convenience and irreparable loss or injury and hence, the mandatory order could not have been passed by the trial Court directing the appellant Corporation to return the security deposit of Rs.15,50,000/- to the respondent original plaintiff.

19. It is yet to be decided in the trial as to whether the Bengal gram (whole) supplied by the respondent - original plaintiff were in conformity with the provisions of the P.F.A. Act or the Rules framed thereunder. It is also yet to be decided as to whether the appellant - Corporation has deviated from the regular established practice of determining the quality of the grams so supplied by the respondent - original plaintiff. It is also relevant factor to be noted here that prior to the filing of the suit before the trial Court, the respondent - original plaintiff has approached this Court by way of writ petition praying, inter alia for the direction to the appellant Corporation to accept the disputed quantity of the gram supplied by it containing kesari and for related reliefs. The said petition was withdrawn by the respondent - original plaintiff with a direction to make proper representation before the appellant Corporation and instead of doing that, Regular Civil Suit No.129 of 2003 was filed before the trial Court. After acceptance of the respondent - original plaintiff's tender to supply Bengal gram of 775 M.T., the respondent - original plaintiff could supply only 368.5 M.T. of gram as against the supply of 387.5 M.T. of gram in the first lot. Out of 368.5 M.T. of gram, initially, the appellant Corporation has found only to the extent of 87.45 M.T. of gram to be in conformity with the provisions of P.F.A. Act and Rules framed thereunder. 43.5 M.T. of gram was rejected on the ground that it did not conform to the quality specification, as part of quantity was rejected on the ground that it contained kesari gram and part of it was on the ground of foreign matters. Due to this reason, the quantity of 237.55 M.T. of grams were kept in abeyance as on physical verification certain kesari grams were found in the said quality. The same was ultimately found to be true by the Food and Drugs Laboratory, Vadodara, on verification of certain grams picked up from some of the stock and sent to the laboratory. Whether this procedure is permissible or report given, is correct especially when earlier reports demonstrate that there was no kesari gram, can be decided only at the time of trial. If the documents produced are taken into

consideration at this stage Ex.2 of Part-II of the tender document prescribes quality specifications of Bengal gram (whole) to be supplied as per tender document and Clause (f) thereof under the caption "General Characteristics" states that the gram to be supplied by the tenderer were to conform to P.F.A. Rules. As per the decision of Allahabad High Court in the case of Vidya Vinod alias Chunnulal and etc. (supra), the use of kesari dal as food was totally prohibited by P.F.A. Act and the Rules framed thereunder. Clause (9) of the contract between the parties makes it abundantly clear that the entire security deposit is liable to be forfeited for the breach of contract. Whether there is any breach committed by the respondent - original plaintiff and if it is so to what extent and what would be its consequences will be decided at the end of trial. When all these issues are yet to be decided, it is not just and proper for the trial Court to direct the appellant Corporation to return the security deposit of Rs.15,50,000/- to the respondent original plaintiff.

20. If the security deposit is directed to be returned at the interlocutory stage, possibly nothing remains in the suit and the final relief which is claimed in the suit is allowed at the interlocutory stage. The Hon'ble Supreme Court has deprecated this practice and it is clearly held in the case of Bank of Maharashtra (supra) that the practice of granting interim order which practically gives the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other consideration, is deprecated. Here in the present case, as observed earlier, there may be prima facie case in favour of the respondent - original plaintiff, however, there is no balance of convenience nor any public interest. The claim is return of the security deposit. If the respondent - original plaintiff, ultimately succeeds in the suit, it will get the said amount from the appellant - Corporation. It is also not the case of the respondent - original plaintiff that even if the respondent original plaintiff succeeds in the suit, it would not be possible to execute the decree which may be passed in its favour. The financial worth of the appellant - Corporation cannot be doubted as it is the Government Corporation and the Corporation is under an obligation to return the deposit in case the respondent original plaintiff succeeds in the suit, subject to its right of appeal etc. Thus, the decree which may be passed, may not merely be a paper decree but it can certainly be executed against the appellant

Corporation.

21. Taking over all view of the matter and considering the fact that the rival contentions of the parties are yet to be processed and examined at the time of the trial, the mandatory direction issued by the trial Court to the appellant Corporation to return the security deposit of Rs.15,50,000/- to the respondent - original plaintiff is not just and proper and hence, the order passed by the trial Court to that extent is quashed and set aside and the appeal is allowed to this extent. The trial Court is, however, directed to decide and dispose of Regular Civil Suit No.129 of 2003 as expeditiously as possible, preferably within the period of six months from the date of receipt of the writ of this Court or from the date of receipt of certified copy of this order, whichever is earlier. The trial Court is further directed to decide the said suit on its merits and on the basis of the evidence led or the pleadings made, without being influenced by any of the observations made in the impugned order passed by the trial Court or in this order.

22. With the above directions and observations, this Appeal from Order is allowed to the above extent.

23. In view of the order passed in Appeal from Order, Civil Application No.7641 of 2003 does not survive and the same is, accordingly, disposed of.

[K. A. Puj,J.]

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